

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WILLIAM DAVIDSON,

Plaintiff,

vs.

PAROLE AT NEVADA,

Defendant.

2:11-cv-00148-JCM-RJJ

ORDER

This is styled as a prisoner civil action. Plaintiff has failed to submit an application to proceed *in forma pauperis* on the required form or pay the filing fee. *See* 28 U.S.C. § 1915(a)(1)-(2); Local Rules of Special Proceedings 1-1, 1-2. Even in the absence of an application to proceed *in forma pauperis*, the court must dismiss the complaint with prejudice as it is factually frivolous. The court now reviews the complaint.

I. Screening Standard

Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner's claims, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an

1 arguable basis either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may,
 2 therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or
 3 where the factual contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a
 4 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. *See Jackson*
 5 *v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

6 Allegations in a *pro se* complaint are held to less stringent standards than formal
 7 pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S.
 8 519, 520-21 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
 9 Cir. 1990). All or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the
 10 prisoner's claims lack an arguable basis either in law or in fact. This includes claims based on legal
 11 conclusions that are untenable (*e.g.* claims against defendants who are immune from suit or claims of
 12 infringement of a legal interest that clearly does not exist), as well as claims based on fanciful factual
 13 allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever*
 14 *v. Block*, 932 F.2d 795, 798 (9th Cir. 1991). Moreover, "a finding of factual frivolousness is appropriate
 15 when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are
 16 judicially noticeable facts available to contradict them." *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).
 17 When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
 18 complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint
 19 that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106
 20 (9th Cir. 1995).

21 **II. Instant Complaint**

22 Plaintiff, who is detained at Clinton Correctional Facility in Dannemora, New York, has
 23 sued "Parole at Nevada c/o New York Defendant." Plaintiff partially uses this court's civil rights
 24 complaint form, and under count I lists "the bail that leaves to Las Vegas to file if I am allowed I am a
 25 incompleated cert. To due process at less" and under supporting facts includes: "It is no real confinement
 26 to clause a significant piece of visiting the promotion into letters that violate people that escape at having

1 no women but are gay (fags) to up in jail not restricted to leave me alone. The people are (gay-those)
2 into taking broke money they are broke and want more money to no assistance at the vacated partial
3 doing.” He continues for more than twenty pages, listing several “counts,” none of which are
4 decipherable.

5 Accordingly, lack of an application to proceed *in forma pauperis* notwithstanding, the
6 court finds that plaintiff’s allegations are fantastic, delusional and irrational. This complaint must be
7 dismissed with prejudice as frivolous, as it is clear from the face of the complaint that the deficiencies
8 cannot be cured by amendment.

9 **III. Conclusion**

10 **IT IS THEREFORE ORDERED** that plaintiff’s complaint is **DISMISSED with**
11 **prejudice** as delusional and factually frivolous.

12 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
13 and close this case.

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15 DATED this 4th day of February, 2011.

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18 UNITED STATES DISTRICT JUDGE
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